IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 11613 of 2007(G)

PETITIONER:

BIJU MATHEW, SWEEPER (O.D.PEON),
KSRTC, THODUPUZHA.

BY ADV. SRI.K.P.RAJEEVAN

RESPONDENTS:

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1. KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

2. ASSISTANT TRANSPORT OFFICER,
K.S.R.T.C., THODUPUZHA.

3. EXECUTIVE DIRECTOR (ADMN),
KSRTC, TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM.

BY ADV. SHRI JOHNSON P. JOHN, SC, KSRTC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 11613 OF 2007

PETITIONER'S EXHIBITS:

EXT.P1 **TRUE COPY OF THE MEDICAL CERTIFICATE NO.385/05 DATED 13.10.05 ISSUED BY THE MEDICAL BOARD.**

EXT.P2 **TRUE PHOTO COPY OF HIS LEFT FOOT AND ANGLE.**

EXT.P3 **TRUE COPY OF ORDER NO.PL.15/PLA3/026288/00 DATED 18.7.2005 ISSUED BY THE RESPONDENT CORPORATION.**

EXT.P4 **TRUE COPY OF THE REPRESENTATION FILED BY THE PETEITIONER BEFORE THE 1ST RESPONDENT ON 20.1.2006.**

EXT.P5 **TRUE COPY OF THE JUDGMENT IN WRIT PETITION (C). NO.13541/06 DATED 25.5.2006.**

EXT.P6 **TRUE COPY OF THE ORDER DATED 28.12.2006 ISSUED BY THE THIRD RESPONDENT.**

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 11613 OF 2007 G

Dated this the 13th August, 2007

JUDGMENT

Petitioner challenges Ext.P6 and seeks a mandamus to change the category of the petitioner and post him as permanent Peon immediately. Briefly put, the case of the petitioner is as follows:

Petitioner is a Sweeper (Other Duty Peon). He has forty per cent disability. Ext.P1 is the Medical Certificate. He relies on Section 47(1) of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the decision of the Division Bench in FACT v. Gopinatha Panicker (ILR 2004 (2) Ker.327). He contends that he is entitled to category change as Peon. In Ext.P6, what is stated is that as per the existing Rules, permanent category change is not allowable in the KSRTC at present. But, he is allowed to continue as OD Peon for six more months. Heard the learned standing counsel appearing for the respondent

Corporation also. He points out that now, there is an order posting him as OD Peon until further orders. There is no serious dispute that while passing Ext.P6, the author of Ext.P6 was not conscious of the provisions of Section 47 of the Act. In such circumstances, I feel that Ext.P6 cannot be sustained and Ext.P6 is quashed. There will be a direction to the first respondent to consider the claim of the petitioner which he has raised in Ext.P4, keeping in mind the provisions of Section 47 of the Act also, and take a decision in this regard in accordance with law within a period of two months from the date of receipt of a copy of this Judgment.

K. M. JOSEPH, JUDGE

kbk.